IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

WP(C).No. 8384 of 2007(W)

PETITIONERS:

1. **S.RADHAKRISHNAN NAIR, (FOREMAN (RETIRED),GOVERNMENT INDUSTRIAL WORKSHOP) K.V.VILASOM HOUSE, PALLICHAL, NARUVAMOODU, THIRUVANANTHAPURAM.**

2. **P.AMBIKA, (W/O. LATE R.GANESAN, FOREMAN(RETD.), GOVERNMENT INSTRUMENT WORKSHOP), AMBIKA BHAVAN, ALUVILA, BALARAMAPURAM, THIRUVANANTHAPURAM.**

BY ADV. SRI.K.N.CHATHUKUTTY

RESPONDENT:

KERALA SMALL INDUSTRIES DEVELOMENT CORPORATION LTD., (GOVERNMENT OF KERALA UNDERTAKING), REPRESENTED BY MANAGING DIRECTOR, HOUSING BOARD BUILDINGS, SANTHINAGAR, THIRUVANANTHAPURAM.

BY ADV. SRI.M.A.MANHU, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.8384/2007 W

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF PROCEEDINGS DTD. 7/03/2005 TO RECOVER THE EXCESS AMOUNT PAID TO THE 1ST PETITIONER.

EXT.P2: COPY OF PROCEEDINGS DTD. 7/03/2005 TO RECOVER THE EXCESS AMOUNT PAID TO THE 2ND PETITIONER.

EXT.P3: COPY OF JUDGMENT IN O.P.NO.31426/2000 DTD. 13/06/2003 OF THIS HON'BLE COURT.

EXT.P4: COPY OF THE JUDGMENT IN W.A.1635/03 DTD. 16/10/03 OF THIS HON'BLE COURT.

EXT.P5: COPY OF JUDGMENT DTD. 10/07/2006 IN WP(C) NO.14237/06.

EXT.P6: COPY OF LETTER ADDRESSED TO THE 1ST PETITIONER DTD. 1/08/2006 BY RESPONDENT.

EXT.P7: COPY OF LETTER DTD. 1/08/2006 ADDRESSED TO THE 2ND PETITIONER BY RESPONDENT.

RESPONDENT'S EXHIBITS:

EXT.R(A): COPY OF THE OPTION EXERCISED BY S.RADHAKRISHNAN NAIR.

EXT.R(B): COPY OF THE OPTION EXERCISED BY LATE R.GANESHAN.

/TRUE COPY/

P.A.TO JUDGE

KSS

V.GIRI,J.

W.P.(C) NO.8384 of 2007

Dated this the 10th day of September, 2007

JUDGMENT

The first petitioner was working as a Foreman in the Government Instrument Workshop, Pappanamcode Unit under the respondents. He retired on superannuation on 30.9.2004. The second petitioner's husband R.Ganesan was also a Foreman in the same workshop. He died in harness. Late Ganesan and the first petitioner were given a fixation of pay to make it equal to another Foreman Karunakaran Asari who was junior in the category of Foreman but who was drawing a higher salary on account of the fact that he was working in the feeder category for a longer period. The fixation in the category of Foreman took place with effect from 15.5.1990. Apparently, the fixation was not objected to by any person nor was it considered erroneous by the employer. An objection was raised to this fixation in the year 1999 in the course of an audit enquiry. Notice was given to the first petitioner on 5.2.2002 requiring him to show cause as to why the alleged erroneous fixation should not be cancelled. It is stated that similar notice was issued to late R.Ganesan as is evidenced from Ext.P2. Replies were given by these two employees. The actual cancellation of the fixation which is stated to be erroneous took place only after the first petitioner retired from service and after the death of R.Ganesan. This is evidenced by Exts.P1 and P2 orders.

Representations were preferred by the petitioners in relation to Exts.P1 and P2 and they were rejected under Exts.P6 and P7. Exts.P1, P2, P6 and P7 are challenged in this writ petition.

2. A counter affidavit has been filed by the Corporation contending that there was erroneous fixation of pay in the year 1994, in the course of implementing the directions issued in a judgment of this Court, rendered in a writ petition filed by the first petitioner and the husband of the second petitioner as O.P.No.13744/1993. The pay of the aforementioned two persons were fixed at Rs.1370 with effect from 15.5.1990, on par with the pay of Karunakaran Asari. But in the year 1999, it was noticed that though Karunakaran Asari was junior to the aforementioned two persons, he had a longer service in the feeder category and it is therefore, that his pay was higher. The fixation of pay of the first petitioner and the husband of the second petitioner on par with that of Karunakaran Asari was therefore erroneous and therefore, on this fact being brought to the notice of the employer in the audit enquiry, steps were taken to cancel the fixation. This resulted in Exts.P1 and P2. It is also contended that options were exercised in the year 2000 by both the first petitioner and late R.Ganesan evidenced by Exts.R(a) and R(b) wherein the pay was given in the revised scale of 1400-2300 with effect from 1.7.1993. On the premise, it is contended that the fixation as also the recovery pursuant to the cancellation of the erroneous fixation is justified.

3. In so far as the direction in Exts.P1 and P2 for recovery of the excess amount stated to have been paid to the employees are concerned,

the issue is covered in their favour by Ext.P3 judgment which has been affirmed in Ext.P4. Thus, the direction for recovery of the amount stated to have been received by the first petitioner and the husband of the second petitioner R.Ganesan, as contained in Exts.P1 and P2 and Exts.P6 and P7 are quashed.

4. In so far as a direction for re-fixation is concerned, I am of the view that the actual re-fixation was done in the case of the husband of the second petitioner after he died. Such re-fixation would have an impact on the retirement benefits that would be due and admissible in favour of late R.Ganesan. I am also constrained to note that the re-fixation pursuant to the judgment of this Court in O.P.13744/1993, took place in the year 1994 and the audit party had raised an objection in 1999. The proposal for cancelling the re-fixation was communicated to the employees concerned in 2002. It seems that the cancellation of the re-fixation took place only after the death of R.Ganesan. According to me, in as much as the Corporation did not pass an order for cancellation of re-fixation during the life time of R.Ganesan, it would be unjustified to cancel the re-fixation order after his death in such a manner as to detrimentally affect his widow. Thus, Ext.P1 and Ext.P7 in as much as they relate to the re-fixation of the scale of pay of R.Ganesan, now deceased husband of the second petitioner is set aside.

5. In so far as the cancellation of the re-fixation of pay of the first petitioner is concerned, again the issue seems to be covered in favour of the Corporation vide Ext.P3 judgment as affirmed in Ext.P4. Apparently, Karunakaran Asari with whom parity was claimed by the first petitioner had

longer service in the feeder category and hence a parity could not have been claimed by the first petitioner. Merely because Karunakaran Asari was junior to the first petitioner in the category of Foreman, it did not mean that the first petitioner should also have the same pay as Karunakaran Asari. This aspect of the matter has been correctly appreciated and taken note of in Exts.P1 and P6, the orders in relation to the first petitioner. Hence Exts.P1 and P6 are upheld in so far as they relate to the cancellation of the re-fixation. As stated above, recovery as ordered in Exts.P1 and P6 need not be made and the said orders are quashed to the extent of directing recovery from the gratuity of the first petitioner. With regard to the remaining aspect Exts.P1 and P6 are upheld.

6. In the result, the writ petition is disposed of quashing Exts.P2 and P7. Exts.P1 and P6 are quashed to the extent to which recovery was ordered from the retirement benefits due and payable to the first petitioner. The cancellation of the re-fixation effected under Exts.P1 and P6 is upheld.

The writ petition is disposed of as above.

V.GIRI, JUDGE

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